

**Reverse and Remand; Opinion Filed August 22, 2017.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-16-00238-CV**

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**SAVANNAH GONZALEZ AND KRYSTAL GONZALEZ, Appellants  
V.  
STEPHANIE GONZALEZ, Appellee**

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**On Appeal from the 101st Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-13-01430**

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**MEMORANDUM OPINION**

Before Justices Bridges, Lang-Miers, and Evans  
Opinion by Justice Evans

Appellants Savannah Gonzalez and Krystal Gonzalez assert that the trial court erred in granting appellee Stephanie Gonzalez's motion for summary judgment.<sup>1</sup> We reverse the trial court's judgment and remand.

**BACKGROUND**

Savannah and Krystal are the shareholders of W.D. Properties, Inc., a company which owned a building in Dallas. On January 26, 2007, W.D. Properties forfeited its Texas corporate charter. W.D. Properties hired Stephanie to act as the company's manager and handle all of the billings, payouts and deposits from January 2009 through November 2010. W.D. Properties paid Stephanie for her work.

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<sup>1</sup> The parties are sisters and because they share the same surname we will refer to them by their first names.

On February 5, 2013, Savannah and Krystal filed a derivative lawsuit as shareholders alleging Stephanie converted the company's funds. Stephanie filed a motion for summary judgment on Savannah and Krystal's conversion claim contending that the statute of limitations barred the claim. Savannah and Krystal filed an amended petition which added claims for breach of fiduciary duty, unjust enrichment and fraud. The trial court granted Stephanie's motion for summary judgment on the conversion claim.

Stephanie filed a combined traditional and no-evidence motion for summary judgment on the claims in the amended petition which the trial court denied. On the day of trial, Stephanie re-urged her motion for summary judgment on the issue of standing. The trial court granted Stephanie's motion for traditional summary judgment on that ground and dismissed Savannah and Krystal's remaining claims for breach of fiduciary duty, unjust enrichment and fraud. Savannah and Krystal then timely filed their notice of appeal of the order granting summary judgment on the breach of fiduciary duty, unjust enrichment, and fraud claims. They do not appeal dismissal of the conversion claim.

## **ANALYSIS**

### **A. Standard of Review**

We review the trial court's summary judgment de novo. *See Salazar v. Ramos*, 361 S.W.3d 739, 745 (Tex. App.—El Paso 2012, pet. denied). A party moving for traditional summary judgment bears the burden of showing that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c). To determine if the non-movant raises a fact issue, we also review the evidence in the light most favorable to the non-movant, crediting favorable evidence if reasonable jurors could do so, and disregarding contrary evidence unless reasonable jurors could not. *See Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009).

## **B. Analysis**

In Stephanie's traditional ground for summary judgment, she asserted that Savannah and Krystal did not have standing to sue on behalf of the corporation because corporate shareholders do not have individual causes of action for personal damages caused solely by a wrong done to the corporation and could not file a derivative action for a corporation that forfeited its corporate charter. We disagree.

"It is well established that when a corporation forfeits its privileges, title to its assets, including its causes of action, is bifurcated; legal title remains with the corporation and the beneficial interest is vested in its shareholders." *Mossler v. Nouri*, No. 03-08-00476-CV, 2010 WL 2133940, at \*4 (Tex. App.—Austin May 27, 2010, pet. denied) (citing *El T. Mexican Rests., Inc. v. Bacon*, 921 S.W.2d 247, 251 (Tex. App.—Houston [1st Dist.] 1995, writ denied) (citing *Regal Constr. Co v. Hansel*, 596 S.W.2d 150, 153 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.). In such a situation, the shareholders holding beneficial title to the claims may assert the corporation's causes of action as the corporation's representatives and "prosecute or defend such action in the courts as may be necessary to protect [their] property rights," i.e., the value of their shares. *Id.* (quoting *Humble Oil & Ref. Co. v. Blankenburg*, 235 S.W.2d 891, 894 (Tex. 1951); see *El T. Mexican Rests., Inc.*, 921 S.W.2d at 251–52; see also *In re Immobiliere Jeuness Etablissement*, 422 S.W.3d 909, 916–917 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding) (per curiam) (derivative lawsuit brought by limited partners of limited partnership). Here, Savannah and Krystal's affidavits in opposition to summary judgment stated that Stephanie managed the corporation and took at least \$19,000 from W.D. Properties for her own use and benefit without permission. Savannah and Krystal further averred that Stephanie failed to pay property taxes and W.D. Properties incurred tax penalties. While W.D. Properties no longer has the legal right to assert its causes of action in court, Savannah and Krystal as

shareholders hold beneficial title to, and have standing to assert, the corporation's causes of action as its representatives and prosecute or defend such action in the courts as may be necessary to protect their property rights, *i.e.*, the value of their shares. *See id.* Accordingly, we conclude that Savannah and Krystal were entitled to bring these claims against Stephanie in a derivative capacity and the trial court should not have granted summary judgment on this ground. *See Mossler*, 2010 WL 2133940, at \*6 ("In a less typical situation, the shareholder may be permitted to enforce the corporation's rights when the corporation itself would not be permitted to do so. For example, a shareholder may be permitted to prosecute proceedings to protect the shareholder's beneficial interest in corporate assets when a corporation is barred from bringing suit because its right to do business in the state has been forfeited."). For these reasons, the trial court erred when it granted summary judgment on the breach of fiduciary duty, unjust enrichment, and fraud claims based on Stephanie's affirmative defense that Savannah and Krystal lacked standing.

### **CONCLUSION**

We reverse the trial court's judgment and remand for proceedings consistent with this opinion.

/David W. Evans/  
DAVID EVANS  
JUSTICE

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**Court of Appeals  
Fifth District of Texas at Dallas  
JUDGMENT**

SAVANNAH GONZALEZ AND  
KRYSTAL GONZALEZ, Appellants

No. 05-16-00238-CV      V.

STEPHANIE GONZALEZ, Appellee

On Appeal from the 101st Judicial District  
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Trial Court Cause No. DC-13-01430.  
Opinion delivered by Justice Evans.  
Justices Bridges and Lang-Miers  
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellants SAVANNAH GONZALEZ and KRYSTAL GONZALEZ recover their costs of this appeal from appellee STEPHANIE GONZALEZ.

Judgment entered this 22nd day of August, 2017.